

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DENNIS GLENDENNING,) CASE NO. 1:18-cv-02424
)
Plaintiff,) JUDGE SOLOMON OLIVER, JR.
)
-vs-) <u>DEFENDANT THE CLEVELAND</u>
) <u>ANIMAL PROTECTIVE LEAGUE'S</u>
CLEVELAND ANIMAL PROTECTIVE) <u>MOTION TO CONTINUE (OR CANCEL)</u>
LEAGUE, et al.,) <u>THE PRELIMINARY INJUNCTION</u>
) <u>HEARING</u>
Defendants.)
)

Now comes Defendant the Cleveland Animal Protective League, by and through counsel, and respectfully moves this Court to continue (or cancel) the preliminary injunction hearing currently scheduled for November 7, 2018 at 1:30 p.m. The reasons for this request are explained more fully in a Memorandum in Support, attached hereto and incorporated herein by reference.

Respectfully submitted,

/s/ Thomas W. Wright

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On October 26, 2018, the Court denied the Motion for Temporary Restraining Order filed by Plaintiff Dennis Glendenning (“Glendenning”). The Court then scheduled a hearing on Glendenning’s request for a preliminary injunction for November 7, 2018 at 1:30 p.m. For the reasons discussed below, Defendant the Cleveland Animal Protective League (the “Cleveland APL”) moves the Court to continue this hearing or, in the alternative, to cancel the hearing in its entirety.

II. BACKGROUND

Having already ruled on Glendenning’s Motion for a TRO, the Court is well-aware of the allegations in the Glendenning Complaint. In addition, prior to filing this Motion to Continue, the Cleveland APL filed a Motion to Stay that outlines these allegations in detail. In order not to be repetitive, the Cleveland APL will not reiterate these allegations herein. Any facts necessary for the Court to decide the present motion will be identified when necessary.

III. DISCUSSION

The Cleveland APL requests a continuance of the November 7, 2018 preliminary hearing for two reasons. Each of these reasons is explained below.

A. The Court should continue the preliminary injunction hearing because the Cleveland APL’s President and CEO has preplanned, work-related travel plans that will not permit her to attend the November 7, 2018 hearing.

The Cleveland APL’s first reason for requesting a continuance is that its President and CEO, Sharon Harvey, will be out-of-town on November 7, 2018. In particular, Ms. Harvey has a long-scheduled trip to Kansas City planned for November 6-10, 2018. The purpose of this trip is two-fold. First, Ms. Harvey is scheduled to attend and participate in a symposium on November

7, 2018 to discuss important issues concerning animal welfare. Second, Ms. Harvey is on the board of directors for an organization dedicated to advocating for animal welfare. The board of directors are holding a board meeting after the symposium. The organization's national conference is then being held from November 8-10, 2018. Therefore, Ms. Harvey is scheduled to be in Kansas City from November 6-10, 2018 and will be unable to attend the November 7, 2018 preliminary injunction hearing.

While the Cleveland APL will be represented by counsel should the preliminary injunction hearing proceed, this matter is of the utmost importance to the Cleveland APL. Any time there are allegations that the Cleveland APL has done something that is against the best interest of an animal—no matter how untrue—the Cleveland APL makes such allegations its top priority. As the President and CEO, Ms. Harvey is the leader of the Cleveland APL and this is her primary concern. Therefore, she is very interested in attending the preliminary injunction hearing, but cannot attend due to her pre-scheduled prior commitments.

In summary, should this Court proceed with a preliminary induction hearing, the Cleveland APL requests a short continuance of the current November 7, 2018 hearing so that its President and CEO may be present at the hearing to advise and potentially testify in this important case. The Cleveland APL submits that a short continuance, perhaps only until the week of November 12, 2018, will not unduly prejudice any parties.

B. The Court should continue or cancel the November 7, 2018 preliminary injunction hearing because granting injunctive relief would essentially require this Court to stay the criminal proceedings against Glendenning.

On October 31, 2018, the Cleveland APL filed a comprehensive Motion to Stay arguing that, under 28 U.S.C. § 2283, *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), and *Caroline's Kids Pet Rescue v. Lake Humane Society*, 1:17-cv-00297, 2017 WL 3976209 (N.D.

Ohio Sept. 11, 2017), this Court should stay this matter pending resolution of the 25-count criminal complaint pending against Glendenning in Parma Municipal Court. The Cleveland APL incorporates by reference the arguments in that motion herein. In short, under the authorities cited therein, the *Younger* doctrine requires (or at least strongly encourages) this Court to refrain from enjoining the pending criminal charges against Glendenning.

Besides the public policy reasons for staying this case pursuant to *Younger*, there are also practical concerns. For example, this Court has set a preliminary injunction hearing for November 7, 2018. It will be Glendenning's burden during this hearing to establish that he is entitled to injunctive relief. However, because Glendenning is facing criminal prosecution, he certainly would be within his rights to assert his right against self-incrimination. Therefore, unless he has a robust case beyond his own testimony, it will be almost impossible for him to meet his burden of proof unless he waives his right against self-incrimination.

Another concern for this Court should be the rights of the Cleveland APL, the entity entrusted under Ohio law to pursue criminal charges against Glendenning. Glendenning, in his criminal prosecution, will be entitled to a full range of discovery from the Cleveland APL, the State of Ohio, and any other prosecuting authorities. However, to require the Cleveland APL to present this information at a preliminary hearing in less than a week would provide Glendenning with a preview of the criminal case against him. While the Cleveland APL has no problem presenting such evidence, the interests of comity and federalism should discourage a criminal defendant from obtaining such evidence outside of the state criminal rules and procedures.

IV. CONCLUSION

For the above reasons, Defendant the Cleveland APL respectfully requests this Court issue an order to continue (or cancel) the preliminary injunction hearing scheduled for November 7, 2018.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(f)

I certify that this case has not been assigned to a track and that this memorandum adheres to the page limitation for standard unassigned cases set forth in Local Rule 7.1(f) of the United States District Court for the Northern District of Ohio.

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2018 a copy of the foregoing was filed electronically.
Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.
Parties may access this filing through the Court's system.

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